

REMARKS

Claims 42-82 are pending in the application. Claims 47-48, 54-55, 57, 60-62, 67-72, and 74-76 have been withdrawn from consideration. Claims 42 and 43 have been amended. No claims have been cancelled or added. Therefore, claims 42-82 remain pending and are resubmitted for consideration.

Rejection under 35 U.S.C. 102 – Sasaki

Claims 42-46, 49-53, 56, 58-59, 63-66, and 77-82 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,364,402 (“Sasaki”). The rejection should be withdrawn for at least the following reasons.

The present application describes embodiments in which the hood of a vehicle can be deflected in a first deflecting direction, and, at a later time, the hood can be moved counter to the first deflecting direction. *See e.g.* Application at para. [0069].

The rejection should be withdrawn at least because Sasaki fails to disclose, teach, or suggest an automotive safety apparatus that comprises, among other things: a device that is

configured to control movement of the part of the external paneling in the second direction counter to the first deflecting direction based upon the time of impact with the person in such a manner that, as a function of an instant of the impact against the part of the external paneling deflected to the second position, the device permits a movement of the part of the external paneling counter to the first deflecting direction or opposes such a movement in order to prevent the movement of the part counter to the first deflecting direction,

as recited in claim 42.

Furthermore, Sasaki fails to disclose, teach, or suggest an automotive safety apparatus that comprises, among other things, a device that “permits a movement of the part of the external paneling in the second direction counter to the first deflecting direction only a predetermined time period after the initial deflection of the part of the external paneling in the first deflecting direction,” as called for in claim 43.

Sasaki discloses a device (25) with a piston (28) configured to deflect the hood (21) of an automobile in a first deflecting direction. Sasaki merely describes a device capable of absorbing impact and forming a recessed portion. Sasaki does not disclose, teach or suggest controlled movement of the hood of an automobile in a second direction counter to the first deflecting direction based upon the time of impact with the person such that “the device permits a movement of the part of the external paneling counter to the first deflecting direction or opposes such a movement in order to prevent the movement of the part counter to the first deflecting direction,” as recited in claim 42 or “permits a movement of the part of the external paneling in the second direction counter to the first deflecting direction only a predetermined time period after the initial deflection of the part” as recited in claim 43.

Sasaki does not teach such a time dependency. Rather, the piston (28) remains constant after deflection of the hood (21). Sasaki teaches a spring (31) that holds the piston rod (28) in the uppermost position. See Sasaki at col. 5, lines 56-65, and FIG. 6. Furthermore, the hood (21) is held in an uppermost position in the embodiment of Figure 9 such that the impact of an obstacle is absorbed by forming a large recess in the hood. See Sasaki at col. 7, lines 41-44. Thus, Sasaki discloses a device that remains constant in time and is not time dependent. According to Sasaki, the impact of the person against the hood (21) leads to the same result (i.e., a local deformation of the hood) regardless when the impact occurs at a first time or at a different, second time. Therefore, the rejection of claims 42 and 43 should be withdrawn. Applicants respectfully request reconsideration and withdrawal of the rejection.

Claims 44-46, 49-53, 56, 58-59, 63-66, and 77-82 depend from claim 42 and are allowable therewith, for at least the reasons set forth above, without regard to the further patentable subject matter set forth in these dependent claims.

Conclusion

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application, as amended, is respectfully requested.

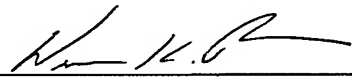

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date March 11, 2009

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5582
Facsimile: (202) 672-5399

By  Reg. No. 59,396
 Howard N. Shipley
Attorney for Applicant
Registration No. 39,370